

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
August 21, 2014**

Members Present

Bill O'Brien, Acting Chairman
Norma Collins, Clerk
Tom McGuirk
Ed St. Pierre
Ken Lessard (Alternate)

Chairman O'Brien called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was said.

Chairman O'Brien asked for a Moment of Silence for Wanda Robertson, Assistant Town Counsel, who passed away on Sunday.

PETITION SESSION

Chairman O'Brien called petitioners for Petition 39-14, 128 Ashworth Avenue, forward. Chairman O'Brien noted that Mr. McGuirk and Mr. Lessard would have to step down during the hearing of this petition leaving a board of only three members. He asked if they would prefer to postpone until next month. Attorney Peter Saari, representing the petitioners, said they would prefer to postpone.

Mr. McGuirk suggested that if it is possible to get a five-person board, the petition could be heard in one week on Thursday, August 28th. Chairman O'Brien said he would check to see if this would be possible and if so everyone would be notified.

36-14...The continued Petition of Denise Gauron, Trustee Stooges Realty Trust for property located at One Ocean Blvd. seeking relief from Article(s) 4.1.1, 4.5.1, 4.5.2, 4.7, 6.1, 6.3.1, 8.2.3, 8.2.4 and 8.2.6 to remove all of the existing buildings on the property and construct a single three-story building with six 1-bedroom and eight 2-bedroom residential units where relief for density, setbacks and parking are required. This property is located on Map 298, Lot 9 and in the G Zone.

Chairman O'Brien said that Mr. McGuirk would step down for the hearing of this petition and asked if the petitioner wished to proceed with four board members. Attorney Saari, representing the petitioner, said they would prefer to proceed.

At this time Mr. McGuirk stepped down from the board.

Attorney Saari, Joe Coronati, Jones & Beach, and Mike Keene, Architect came forward. Attorney Saari said this is the only private property on Ocean Blvd. zoned for general use. It is a tiny island of general zoned land. This property currently has a mix of uses, residential and commercial. In total they cover more area than this proposed building would.

Attorney Saari said the size of the building has been reduced considerably since presented at prior hearings. Attorney Saari said Gino Marcotti has offered to allow plantings to go onto state property. There will be 14 units. Parking relief is being requested. The density is consistent with the Sea Spray. It is in the public interest to upgrade this property for tax purposes and appearances. This building would be an entryway to Hampton. Attorney Saari went through the five criteria and said he felt they had been met.

Mr. Keene discussed the building design and said they have tried to give it a “beach” feel. The building is the same on all four sides.

Questions from the Board

Ms. Collins said she liked the site plan. Chairman O’Brien asked if the Port Authority owns the road going in. Mr. Coronati said they have control over it. Chairman O’Brien asked if the State parking lot was open to the public. Mr. Coronati said it was, but there is a fee. Mr. St. Pierre asked about green space. Mr. Coronati explained the location of such space. He said there has been discussion about placing a fence across the back of the property with a gate and boardwalk so everyone is directed in the same direction. Mr. Coronati showed where six extra parking spaces would be added in front.

Mr. Coronati said there had been two abutters’ meetings. As a result No Parking signs have been added and the dumpster placed under the building. They have agreed to extend the fence and one story has been removed from the building.

Comments from the Audience

John Gebhart, 4 Bailey Avenue, came forward. Mr. St. Pierre asked Mr. Gebhart if he had been notified correctly. Mr. Gebhart said they were for the first hearing, but not for the second. Chairman O’Brien asked Mr. Gebhart if he would waive his right regarding notification for this meeting and Mr. Gebhart said he would.

Mr. Gebhart said his biggest concerns are density and parking. He said he feels things will be very crowded. Being short six parking spaces creates a problem. Mr. Gebhart said he felt the six spaces in front should be leased. Also, there are too many units in this building.

Linda Gebhart, 4 Bailey Avenue, came forward. Chairman O'Brien asked her if she also waived her right concerning notification for this meeting. She said she did. Ms. Gebhart said she was not happy with the 14 units. This is too many. This project will impact many who live in the area. Ms. Gebhart said she questioned the petitioner's hardship.

June White, 8 River Avenue, came forward. Ms. White said this is important because of what people see when they come into town. This project will not be consistent with the "fishing" aspect of this area. This will alter the character of the neighborhood. Congestion and parking are major concerns. Continuing to let developers build more and more is just adding to the problem.

Back to the Board

Chairman O'Brien asked who would enforce the No Parking signs. Mr. St. Pierre said the police can be called to enforce if it is a fire lane. Mr. Coronati said they could dedicate it as a fire lane. Ms. Collins said dimensions might have to be considered for fire lane designation.

Ms. Collins noted that the previous submission had 12 units and one more story. This one has one less story, but has 14 units. She asked if this had not become more dense by removing a story. Mr. Coronati said they removed the commercial space which would also have required parking. There are two more units, but four less commercial spaces.

Mr. St. Pierre said the "fishing" aspect will not go away with this project. Mr. St. Pierre said he felt this should go before Town Meeting to see if this can go to Business Seasonal. Now the board is looking at General zoning regulations. Mr. St. Pierre said he liked the commercial part in the previous proposal and has a hard time with 14 units.

Mr. Lessard said this is a large project for this lot.

Chairman O'Brien said if the first floor mirrored what was on top and were 2-bedroom units a variance would not be needed for parking. He said he would approve the project if there were 2-bedroom units on the first floor. Mr. St. Pierre said he agreed with this. Mr. St. Pierre said his big issue is General vs. Business Seasonal zoning.

Attorney Saari said perhaps they were being premature and should get with the Port Authority and come back to the Board at a later date. It could also be possible to go to 2-bedroom on the first floor.

Moved by Mr. Lessard, seconded by Mr. St. Pierre, to allow petitioner for Petition 36-14 to withdraw without prejudice.

Vote: 4 yes, 0 no. Motion passed unanimously.

At this time Mr. McGuirk stepped back up to the board.

38-14...The Petition of William R. & Mary E. Carroll for property located at 46 Ancient Highway seeking relief from Article IV, Section 4.5.1 (front setback); 4.5.2 (side setback); Article I, Section 1.3 for substantial rebuild on existing foundation of single family residence with expansion to include new two car garage and expanded deck area and a second floor of living space. This property is located on Map 134, Lot 47 and in the RA Zone.

Mr. William Carroll, Henry Boyd of Millennium Engineering, Scott Brown, Architect, and Attorney Stephen Ells came forward.

Attorney Ells said this is a reconstruction of a single family home on this site. The architectural plans showed a fireplace which Mr. Carroll has decided not to do. The existing doorway will remain instead of being a solid wall. This reconstruction will be very consistent with the neighborhood. The deck will be coming off the south side of the building and will improve the non-conformity. Attorney Ells went through the five criteria and said he felt they had been met.

Questions from the Board

Ms. Collins asked what the setback was for the new garage. Mr. Boyd said it is 10.8 ft., but there is a substantial overhang. Even after the garage is built, there will still be 33 ft. from the edge of the travel pavement to the front of the house. Ms. Collins then said this is a situation in a very tight neighborhood. Everyone is improving their property but they are tending to move out in the street. The street is very narrow. It is imperative that there is parking on the property.

Mr. Boyd showed where parking would be and said parking and space are not issues.

Mr. St. Pierre asked about the foundation. Mr. Carroll said a new foundation had been put in sometime prior to his purchase of the property.

Chairman O'Brien asked about the removal of the chimney from the plans. Mr. Boyd said that there would be a gas vent.

Chairman O'Brien said when looking at Drawing A-3 there is no chimney. However when you are looking west and east you should have the same depth perception across. Therefore something is missing. Chairman O'Brien said he is concerned because the deck on the east elevation is shown, but not the one on the west.

Chairman O'Brien objected to the word "typical" on the architectural plans. It can cause a lot of problems. Drawing A-O shows the foundation, but not the overhang. Most architects show both.

Mr. Brown said his plans have been closely coordinated with Mr. Boyd's plans. Chairman O'Brien objected saying the engineering and architectural plans are not the same. He said the plans have to be correct. Dimensions to the foundation and to the drip edge are needed.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. McGuirk, seconded by Mr. Lessard, to approve Petition 38-14 subject to the submittal of an updated plot plan and architectural drawings that are in agreement and reflect the latest plan.

Mr. St. Pierre said the board should address hardship. He said he was a little concerned about the front of the garage being close to the road. Hardship was the existing foundation in a specific place and they are trying to work with that. Discussion of hardship should be added to the Board's procedure.

Chairman O'Brien asked the Board if the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

40-14...The Petition of Felicia White for property located at 169 Ocean Blvd. seeking relief from Article 11.5a to allow a seasonal lemonade pushcart business to operate on the Casino concourse outside the doorway to Wicked Willy's. This property is located on Map 287, Lot 033 and in the BS Zone.

Felicia White, Bill Griffin and Attorney Peter Saari came forward. Attorney Saari said Ms. White and Mr. Griffin are owners of Wicked Willy's. They want to have a pushcart to roll out to sell lemonade. This will be in the Casino concourse. It is out of the way of traffic and a safe activity. Attorney Saari went through the five criteria although he said it was difficult to use them in this case.

Questions from the Board

Mr. McGuirk said the Casino has a foundation, water and a permanent structure. This is a stretch of Section 11.5. If this was on the street or sidewalk this would be a different scenario. This lemonade stand is part of the inside establishment.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. Lessard, seconded by Mr. McGuirk, to grant Petition 40-14.

Chairman O'Brien asked the Board if the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

BUSINESS SESSION

Approval of Minutes

Moved by Mr. St. Pierre, seconded by Mr. McGuirk, to approve the Minutes of June 12, 2014.

Vote: 3 yes, 0 no, 2 abstentions (Lessard, O'Brien).

Moved by Mr. St. Pierre, seconded by Mr. McGuirk, to approve the Minutes of July 17, 2014 as amended.

Vote: 5 yes, 0 no. Motion passed unanimously.

Motion for Rehearing for Appeal of Administrative Decision – Petition 28-14 – 83 Ocean Blvd.

Chairman O'Brien said the Board had denied this Appeal. Now they are coming back and are saying that the Board made an error and needs to revisit. Chairman O'Brien said the applicant needs to do this in order to go to court. This will be a condo dispute over which the Zoning Board has no jurisdiction.

Mr. McGuirk said they have to follow condo regulations. As long as they have not brought in anything new the Board cannot grant a rehearing.

Mr. St. Pierre said he disagreed with the allegation in this Motion asking for a rehearing because the Zoning Board made an error. Unit 108 had access to the conduits to the roof and space in the roof and the Building Inspector was given documentation stating this.

Chairman O'Brien went over the Motion. He said the first paragraph is a statement of fact. The second paragraph refers to documents going to the Attorney General. Chairman O'Brien said this was a legal issue beyond the jurisdiction of this Board. The third paragraph reiterates the discussion held last month. The fourth paragraph states the Zoning Board made an error.

Mr. McGuirk said the Board has no jurisdiction over common area. That is up to the condo association. If you live in a condo, you are a multi-family.

Chairman O'Brien then said a substantive decision was made by the Board that the Board does not have ultimate jurisdiction in rendering a decision on condo documents and for that reason the Board should deny the Motion for Rehearing.

Moved by Chairman O'Brien, seconded by Mr. St. Pierre, to deny the Motion for Rehearing for Petition 28-14, 83 Ocean Blvd.

Vote: 3 yes, 0 no, 2 abstentions (Lessard, McGuirk). Motion passed.

Adjournment

Moved by Mr. St. Pierre, seconded by Chairman O'Brien, to adjourn the meeting at 9:59 p.m.

Respectfully submitted,

Joan Rice
Secretary